

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-12-074

FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF BRISTOL WEST
INSURANCE COMPANY

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Bristol West Insurance Company ("Respondent"), pursuant to §§ 10-1-203, 204, and 205, as well as § 10-3-1106, C.R.S.

The Commissioner has fully considered and reviewed the Verified MCE Report ("Report") dated October 21, 2011, the written submissions and rebuttals provided November 18, 2011, by Respondent in response to the Report, and the recommendations of staff.

The Report covers the examination period of January 1, 2009, through December 31, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a property and casualty insurer in the State of Colorado.
2. On October 12, 2011, in accordance with §§ 10-1-201, 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.

4. The MCE was completed on October 12, 2011. Pursuant to § 10-1-205(2) the market conduct examiners prepared the Report, which the Examiner-In-Charge timely filed with the Division, under oath, on October 21, 2011. The Report was subsequently timely transmitted to Respondent on October 21, 2011.
5. On October 21, 2011, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1), C.R.S., the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. On November 18, 2011, Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner has fully considered and reviewed the Report, Respondent's November 18, 2011, submissions and rebuttals to the Report, and the recommendations of staff.
9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.
10. This MCE was not conducted as an informal investigation of consumer complaints.
11. This MCE did not proceed and was not conducted as a targeted on-site examination pursuant to § 10-1-212, C.R.S.

CONCLUSIONS OF LAW AND ORDER

12. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as modified ("Modified Report"). The Commissioner has modified the Report as follows: Issues E2, G4, G5, G7, and J4 were removed from the Report. Issues A2 and A3 were combined and numbered as Issue A2; Issues G1, G2, and G3, were combined and numbered as Issue G1. The remaining "G" issues were renumbered to reflect the combining of Issues G1, G2, and G3, and the removal of Issues G4, G5, and G7. The Issue statements for Issues A1 and G1 were also modified to reflect the combined issues.
13. The Commissioner finds the Respondent operated in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.

14. The Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.
15. A copy of the Modified Report is attached to the Final Agency Order and is incorporated herein. The October 21, 2011, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its submission and rebuttals on November 18, 2011. The Respondent was required to cure the violations set forth below in the time frame and manner set forth below.
16. Issue A1: Failure to retain and provide readily accessible and retrievable claims data for sampling and review of medical payments claims for timeliness of resolution as required under Colorado insurance law. This failure constitutes a violation of § 10-4-642, C.R.S., and Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures and revised its record maintenance procedures to ensure all medical payments records are maintained in such a way that the received and adjudication dates are recorded in the system and can be provided within the timeframes required by Colorado insurance law.
17. Issue A2: Failure to retain copies of required documentation in claim files, resulting in incomplete and incorrect responses to requests from examiners in a market conduct examination. This failure constitutes a violation of § 10-1-204, C.R.S., and Colorado Insurance Regulations 1-1-7, 1-1-8 and 5-1-14. The Respondent was required to provide written evidence to the Division that it has implemented procedures and revised its internal policies and procedures to ensure it retains the documentation required to show its investigation and resolution of claims, and to ensure correct and complete responses are provided to examiners during a market conduct examination. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
18. Issue E1: Including in applications and policy contract forms statements and provisions that coverage may be voided for providing any false or misleading information. This failure constitutes a violation of §§ 10-1-128 and 10-4-602, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than sixty (60) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised the language in its applications and policies to allow voiding or rescinding coverage for false or misleading material information only if the information was provided knowingly and with intent to defraud. Within these sixty (60) days, the Respondent shall also provide the Division with specimen copies of all

forms containing the revised provisions and provide the proposed date the forms will be implemented.

19. Issue E2: Failure to include the notices of premium increase and notices of underwriting decisions and practices forms currently in use in the annual report certifying forms. This failure constitutes a violation of § 10-4-633, C.R.S., and Colorado Insurance Regulation 1-1-6. The Respondent was required to provide written evidence to the Division that it has revised its practices and procedures to ensure that the forms in use during the certification period are listed on the annual report certifying forms and that it uses only those forms that are certified in compliance with Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
20. Issue E3: Failure to include notice of the right to replace the insurance through an assigned risk plan on premium increase notice forms. This failure constitutes a violation of §§ 10-4-629 and 10-4-633, C.R.S. The Respondent was required to provide written evidence to the Division that it has revised its notices of premium increase to include notice of the right to replace the automobile insurance through an assigned risk plan as required by Colorado insurance law. The Respondent was also required to provide the Division with specimen copies of all forms containing the revised provisions and provide the proposed date the forms will be implemented. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
21. Issue G1: Including in underwriting guidelines incorrect rules regarding acceptable and unacceptable risks, thereby allowing Bristol West to decline or exclude from coverage certain otherwise eligible individuals. This failure constitutes a violation of §§ 10-4-601, 10-4-626, C.R.S., and Colorado Insurance Regulation 5-2-12. The Respondent was required to provide written evidence to the Division that it has revised its underwriting guidelines regarding acceptable risks to ensure compliance with Colorado insurance law. The Respondent was also required to provide the Division with specimen copies of its guidelines containing the revised provisions and provide the proposed date the revisions will be implemented. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
22. Issue G2: Increasing premiums at renewal, in some instances, due to convictions or accidents without at least one (1) incident that occurred during the fifteen (15) month period immediately preceding the renewal date. This failure constitutes a violation of Colorado Insurance Regulation 5-2-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its underwriting practices and procedures to comply with Colorado insurance law regarding application of time limitations for premium increases due to driving violations.

In addition, the Respondent shall conduct a self-audit of all renewals effective January

- 1, 2009, through October 21, 2011, to determine the number of policyholders whose premium was increased due to this underwriting practice and refund any additional premium charged. A report of the self-audit shall be provided to the Division no later than ninety (90) days from the date this report is adopted.
23. Issue G3: Failure to disclose in premium increase notices that the choice to cover or exclude a driver from coverage was a choice between two premium increases. This failure constitutes a violation of § 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than sixty (60) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its excluded driver offers in premium increase notices to include complete disclosure and correct information regarding the choices offered in compliance with Colorado insurance law. Within these sixty (60) days, the Respondent shall also provide the Division with specimen copies of all premium increase notices containing the revised provisions and provide the proposed date the forms will be implemented.
 24. Issue G4: Issuing premium increase notices at renewal that did not include specific information required under Colorado insurance law. This failure constitutes a violation of § 10-4-629, C.R.S., and Colorado Insurance Regulations 1-1-6 and 5-2-12. The Respondent was required to provide written evidence to the Division that it has made revisions necessary to ensure that all notices of premium increase issued to insureds are in compliance with Colorado insurance law. Such necessary revisions include, but are not limited to, revising premium increase notice forms and underwriting practices and procedures. The Respondent was also required to provide the Division with specimen copies of any forms revised to comply with Colorado insurance law and provide the proposed date the revised forms and procedures will be implemented. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
 25. Issue H1: Failure, in some instances, to comply with mid-term cancellation notice requirements as set forth in Colorado insurance law. This failure constitutes a violation of §§ 10-4-603 and 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent provide written evidence to the Division that it has revised its underwriting guidelines, practices and procedures to ensure all mid-term cancellation notices are issued in compliance with Colorado insurance law.
 26. Issue J1: Failure, in some instances, to pay, deny or settle medical payments claims within the time frame required by Colorado insurance law. This failure constitutes a violation of §10-4-642, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its claims practices to ensure that medical payments claims are paid, denied or settled within the required time frame in compliance with Colorado insurance law.

27. Issue J2: Failure, in some instances, to pay interest on medical payments claims not paid, denied, or settled within the required time frame. This failure constitutes a violation of §10-4-642, C.R.S. The Respondent was required to provide written evidence to the Division that it has revised its claims practices to ensure proper payment of interest on medical payments claims for which interest is owed in compliance with Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions ordered regarding the payment of interest on medical payment claims not paid within the required time period.


However, the Respondent shall conduct a self-audit of all medical payments claims received January 1, 2009, through October 21, 2011, that were adjudicated prior to its claims system conversion, to determine the number of claims paid late for which interest was owed but not paid. The Respondent shall pay any interest owed on each claim to the appropriate individual and provide a report of the self-audit to the Division no later than ninety (90) days from the date this report is adopted.

28. Issue J3: Failure, in some instances, to give a full written explanation of what information was needed to resolve a claim within thirty (30) calendar days after receipt of an unclear claim. This failure constitutes a violation of §10-4-642, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its medical payments claims practices to ensure that, within thirty (30) calendar days after receipt of an unclear claim, it sends a full explanation in writing of what additional information is needed to resolve the claim in compliance with Colorado insurance law.
29. The issues and violations described in paragraphs 16 through 28 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Commissioner has ordered a civil penalty in the amount of one hundred fifty-four thousand and no/100 dollars (\$154,000.00) for the cited violations of Colorado law. The \$154,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to 24-34-108, C.R.S., for a total balance due of one hundred sixty-one thousand five hundred and no/100 dollars (\$161,500.00). The surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program. The penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order.
30. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Report, as modified and adopted by this Final Agency Order, dated December 21, 2011.
31. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to

comply with the terms of this Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law. Copies of the Modified Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.

32. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.
33. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

WHEREFORE: It is hereby ordered that the findings of facts and conclusions of law contained in the Report dated October 21, 2011, subsequently adopted by the Commissioner with modifications on December 21, 2011, are hereby filed and made an official record of this office, and the within Final Agency Order incorporating the adopted Modified Report is hereby approved and effective this 21st day of December, 2011.


Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of December, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-12-074 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF BRISTOL WEST INSURANCE COMPANY**, in the United States
Mail via certified mailing with postage affixed and addressed to:

Ms. Audrey E. Sylvan, President
Bristol West Insurance Company
5590 West Creek Road
Independence, OH 44131



Eleanor Patterson
Market Regulation Administrator
Division of Insurance